

APPENDIX.

National Labor Relations Act, 49 Stat. 449.

Section 10.

"(e) The Board shall have power to petition any circuit court of appeals of the United States (including the Court of Appeals of the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the Supreme Court of the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were

reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347)."

"(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall

have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive."



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CHARLES ELMORE GROUL
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IN THE
Supreme Court of the United States

October Term, 1940

No. 597

THE TEXAS COMPANY,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD.

REPLY BRIEF FOR PETITIONER.

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REPLY BRIEF FOR PETITIONER.

The entire brief of the National Labor Relations Board in opposition to our petition for a writ of certiorari herein is predicated upon the assumption that the Circuit Court of Appeals for the Seventh Circuit could not be vested with jurisdiction to enforce the Board's order against Cities Services Oil Company, one of the three respondents in the consolidated proceeding, since Cities Service Oil Company neither resides nor transacts business in the Seventh Circuit. On this assumption the Board argues that proper and efficient administration of the Act requires that only one Circuit Court of Appeals consider the Board's order and that, accordingly, on the authority of *Stanolind Oil and Gas Company v. National Labor Relations Board*, decided December 14, 1940 (C. C. A., 5th), the petition for review was properly dismissed.

We respectfully submit that this assumption was erroneous since the Circuit Court of Appeals had full jurisdiction over Cities Service Oil Company as well as over The

Pure Oil Company and The Texas Company, and, accordingly, the Seventh Circuit should have denied the Board's motion to dismiss our petition for review and should have directed the Board to file a certified transcript of the proceedings.

As appears from the record (p. 7) Cities Service Oil Company filed in the Seventh Circuit on August 29, 1940 a motion for leave to intervene in the proceeding commenced by The Texas Company's petition for review. The said motion for intervention by Cities Service Oil Company was filed in the Seventh Circuit two days before the Board filed its petition for enforcement in the Second Circuit (R. 14).

Clearly, any Circuit Court of Appeals has jurisdiction of the subject matter, namely, of petitions for review or for enforcement of orders of the National Labor Relations Board. Equally clearly, any Circuit Court of Appeals could obtain jurisdiction over Cities Service Oil Company by the consent of that company, even though it did not reside or do business within the Circuit.

By filing a motion to intervene, Cities Service Oil Company manifested its consent to be made a party to the review proceedings pending in the Seventh Circuit and unquestionably submitted itself to the jurisdiction of that court.

Commercial Electric Supply Co. v. Curtis (C. C. A., 8th, 1923), 288 Fed. 657, 659;

Victor Talking Machine Co. v. Brunswick-Balke-Collender Co. et al. (District Court, Delaware, 1922), 279 Fed. 758, 762;

Interstate Railway Co. et al. v. Philadelphia, B. & T. Street Railway Co. et al. (Circuit Court, Pennsylvania, 1908), 164 Fed. 770, 772;

President, etc., of Bowdoin College et al. v. Merritt (Circuit Court, California, 1893), 59 Fed. 6.

In the light of these authorities, there can be no question but that a motion for intervention constitutes a general appearance on the merits. By entering such an appearance, the intervenor waives all special privileges in respect to the particular court in which the action is brought and submits to the jurisdiction of the Court. *St. Louis and San Francisco Railway Co. v. McBride* (1891), 141 U. S. 127, 130.

These general principles are too clear and too well known to admit of doubt. It would appear that the National Labor Relations Board declined to file a certified transcript of the record in the Seventh Circuit, not because of any doubt as to the jurisdiction of that court over the Cities Service Oil Company as intervenor, but in a deliberate endeavor to deprive the Seventh Circuit of the jurisdiction vested in it by Section 10(f) of the National Labor Relations Act and to vest jurisdiction in the Second Circuit, presumably because of the Board's desire to appear as petitioner in an enforcement proceeding rather than respondent in a review proceeding.

Conclusion.

We respectfully submit that for the reasons set out in our petition for a writ of certiorari herein, the said petition should be granted.

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